

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
3 MICHAEL S. KWUN - #198945
ASHOK RAMANI - # 200020
4 633 Battery Street
San Francisco, CA 94111-1809
5 Telephone: (415) 391-5400
Email: rvannest@kvn.com;
6 bferrall@kvn.com; dsilbert@kvn.com;
mkwun@kvn.com, aramani@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

7
8 JONATHAN M. JACOBSON, NY SBN 1350495
CHUL PAK (*pro hac vice*)
DAVID H. REICHENBERG (*pro hac vice*)
9 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
10 1301 Avenue Of The Americas, 40th Floor
New York, NY 10019-6022
11 Telephone: (212) 999-5800
Email: jjacobson@wsgr.com; cpak@wsgr.com;
12 dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF EDUARDO E.
SANTACANA IN SUPPORT OF
DEFENDANT ARISTA NETWORKS,
INC.'S MOTION TO STRIKE LATE
CONTENTIONS, OR, ALTERNATIVELY,
TO CONTINUE CASE SCHEDULE**

Date: October 27, 2016
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Dept: Courtroom 3, 5th Floor

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, Eduardo E. Santacana, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Keker & Van Nest LLP, located at 633 Battery Street,
4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
6 on my personal knowledge or knowledge I obtained through my review of corporate records or
7 other investigation. If called to testify as a witness, I could and would testify competently to such
8 facts under oath.

9 2. I submit this declaration in support of Arista’s Motion to Strike Late Contentions
10 or Alternatively to Continue Case Schedule.

11 3. Pursuant to the terms of the parties’ Stipulated Protective Order, Arista made
12 source code files requested by Cisco through written discovery requests available for inspection at
13 the offices of Keker & Van Nest LLP beginning in August 2015. Members of Cisco’s legal team
14 first began reviewing the source code on August 4, 2015. According to my office’s sign-in
15 sheets, members of Cisco’s legal team spent a total of eighty-eight hours and six minutes
16 reviewing Arista’s source code from August 4, 2015, to January 5, 2016. After investigating, I
17 am not aware of any complaint ever made by Cisco’s counsel relating to the completeness of
18 Arista’s source code production.

19 4. On July 13, 2015, Arista’s counsel met and conferred with Cisco’s counsel
20 regarding Cisco’s refusal to identify specific lost accounts in support of its lost sales claim in
21 response to Arista’s Interrogatory 15. Cisco’s counsel stated during that telephone call that it
22 would not and need not disclose specific lost accounts. Cisco’s counsel argued that Cisco is
23 entitled to prove damages through the use of an expert.

24 5. On January 8, 2016, I participated in a meet and confer telephone call with Cisco’s
25 counsel. I demanded that Cisco identify specific lost accounts in support of its lost sales claim in
26 response to Arista’s Interrogatory 15. Counsel for Cisco refused, stating again that Cisco was not
27 required to disclose specific lost accounts because Cisco could prove its damages through expert
28 evidence alone.

1 6. On June 9, 2016, I participated in a meet and confer telephone call with Cisco's
2 counsel. I asked Cisco's counsel why Cisco did not disclose the 73 accounts it claims are support
3 for its lost sales claim earlier in the discovery period. Cisco's counsel again took the position that
4 Cisco was not required to disclose that information at all and that Cisco could prove damages
5 through an expert. Cisco's counsel also confirmed that the list of accounts served on June 7,
6 2016, was generated using information solely from Cisco's files. Cisco's counsel explained that
7 the list was produced because it was generated to prepare Cisco's Rule 30(b)(6) corporate
8 designee on damages issues, Frank Palumbo, for his deposition. Cisco's counsel also indicated
9 that Cisco would produce a second list on the last day of damages fact discovery, June 10, 2016,
10 and that the second list would be a narrower list that took into account information from both
11 Cisco's files and Arista's document production.

12 7. To date, Arista has taken the deposition of nine individuals identified by Cisco as
13 CLI command "authors": Ram Kavasseri, Anthony Li, Tong Liu, Kirk Loughheed, Devadas Patil,
14 Phillip Remaker, Abhay Roy, Gregory Satz, and Terry Slattery. Arista has also taken the
15 deposition of three third-party vendors of networking equipment that incorporated a CLI: Dell,
16 Juniper Networks, Inc., and Hewlett Packard Enterprise.

17 8. Cisco and Arista agreed to exchange search terms that would be used to search the
18 custodial files of fifteen of the other party's employees. The parties exchanged those search
19 terms on October 16, 2015. Arista designed its search terms related to the copyright claims based
20 on the infringement contentions then-known to Arista. Those contentions did not include Cisco's
21 new allegations relating to "helpdesc." Had Arista known in time, it would have incorporated
22 helpdesc-related search terms into its search terms list. Likewise, had Arista known in time the
23 specific accounts Cisco would claim are support for its lost sales claim in this case, it would have
24 incorporated search terms related to those accounts into its search terms list.

25 9. On June 9, 2016, I participated in a meet and confer telephone call with Cisco's
26 counsel. I asked Cisco's counsel why Cisco did not disclose the 73 accounts it claims are support
27 for its lost sales claim earlier in the discovery period. Cisco's counsel again took the position that
28 Cisco was not required to disclose that information at all and that Cisco could prove damages

1 through an expert. Cisco's counsel also confirmed that the list of accounts served on June 7,
2 2016, was generated using information solely from Cisco's files. Cisco's counsel explained that
3 the list was produced because it was generated to prepare Cisco's Rule 30(b)(6) corporate
4 designee on damages issues, Frank Palumbo, for his deposition. Cisco's counsel claimed that it
5 had not disclosed its contentions earlier because it was waiting for Arista to produce its financial
6 data, even though that list did not incorporate any financial data from Arista's document
7 production. Cisco's counsel also indicated that Cisco would produce a second list on the last day
8 of damages fact discovery, June 10, 2016, and that the second list would be a narrower list that
9 took into account information from both Cisco's files and Arista's document production.

10 10. In its litigation against Arista before the International Trade Commission, Cisco
11 produced over 600 ".py," or python, source code files belonging to Arista's Extensible Operating
12 System that it had in its possession. Those files have since been produced in this litigation. The
13 metadata pertaining to those files indicates that they were all in Cisco's possession before it filed
14 suit in this Court. The files include helpdesc text strings that Cisco now claims were unlawfully
15 copied from Cisco software.

16 11. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of Defendant
17 Arista Networks Inc.'s First Set of Interrogatories (Nos. 1–15), served April 10, 2015.

18 12. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of Plaintiff
19 Cisco Systems, Inc.'s Objections and Responses to Arista Networks, First Set of Interrogatories
20 (Nos. 1–15), served May 14, 2015.

21 13. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of Plaintiff
22 Cisco Systems, Inc.'s Second Supplemental Objections and Responses to Arista Networks First
23 Set of Interrogatories with Exhibits B and C, served August 7, 2015.

24 14. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of Plaintiff
25 Cisco Systems, Inc.'s Second Supplemental Objections and Responses to Arista Networks First
26 Set of Interrogatories with Exhibits D and E, served September 1, 2015.

1 15. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of Plaintiff
2 Cisco Systems, Inc.'s Fourth Supplemental Objections and Responses to Arista Networks First
3 Set of Interrogatories served October 14, 2015.

4 16. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of Plaintiff
5 Cisco Systems, Inc.'s Seventh Supplemental Objections and Responses to Arista Networks First
6 Set of Interrogatories, served January 5, 2016.

7 17. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of Plaintiff
8 Cisco Systems, Inc.'s Supplemental Objections and Responses to Arista Networks
9 Interrogatories, served May 27 2016.

10 18. Attached hereto as Exhibit 8 is a true and correct copy of Exhibit G to Cisco
11 Systems, Inc.'s Fifth Supplemental Responses to Arista's Interrogatories, served May 27, 2016.

12 19. Attached hereto as Exhibit 9 is a true and correct copy of Exhibit H to Cisco
13 Systems, Inc.'s Fifth Supplemental Responses to Arista's Interrogatories, served May 27, 2016.

14 20. Attached hereto as Exhibit 10 is a true and correct copy of the Opening Expert
15 Report of Kevin Almeroth Regarding Copying Submitted on Behalf of Cisco Systems Inc., dated
16 June 3, 2016.

17 21. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of Exhibit 6 to
18 the Opening Expert Report of Kevin Almeroth Regarding Copying Submitted on Behalf of Cisco
19 Systems Inc., dated June 3, 2016.

20 22. Attached hereto as Exhibit 12 is a true and correct copy of Plaintiff Cisco Systems
21 Inc.'s Corrected and Supplemental Objections and Responses to Arista's Interrogatory No. 20,
22 served May 27, 2016.

23 23. Attached hereto as Exhibit 13 is a true and correct copy of an Infringement Chart
24 for U.S. Patent No. 7,162,537, which was attached as Exhibit 18 to the Complaint filed in the
25 Matter of Certain Network Devices, related to Software and Components Thereof before the U.S.
26 International Trade Commission filed December 18, 2014

27 24. Attached hereto as Exhibit 14 is a true and correct copy of an Infringement Chart
28 for U.S. Patent No. 7,290,164, which was attached as Exhibit 20 to the Complaint filed in the

1 Matter of Certain Network Devices, related to Software and Components Thereof before the U.S.
2 International Trade Commission filed December 18, 2014.

3 25. Attached hereto as Exhibit 15 is a true and correct copy of a letter I sent to
4 Matthew Cannon, counsel for Cisco, regarding Cisco's Request for Production, dated December
5 11, 2015.

6 26. Attached hereto as Exhibit 16 is a true and correct copy of Plaintiff Cisco Systems
7 Inc.'s Supplemental Objections and Responses to Arista's Interrogatory No. 15, served June 7,
8 2016.

9 27. Attached hereto as Exhibit 17 is a true and correct copy of Exhibit A to Plaintiff
10 Cisco Systems Inc.'s Corrected and Supplemental Objections and Responses to Arista's
11 Interrogatory No. 20, served June 7, 2016.

12 28. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the Rough
13 Deposition Transcript of Frank Palumbo, taken June 7, 2016.

14 29. Attached hereto as Exhibit 19 is a true and correct copy of Plaintiff Cisco Systems
15 Inc.'s Supplemental Objections and Responses to Arista's Interrogatory No. 15, served June 10,
16 2016.

17 30. Attached hereto as Exhibit 20 is a true and correct copy of Exhibit A to Plaintiff
18 Cisco Systems Inc.'s Corrected and Supplemental Objections and Responses to Arista's
19 Interrogatory No. 20, served June 10, 2016.

20 31. Attached hereto as Exhibit 21 is a true and correct copy of Arista Networks Sixth
21 Set of Interrogatories (Nos. 21-25) to Cisco Systems, Inc., served March 30, 2016.

22 Attached hereto as Exhibit 22 is a is a true and correct copy of Plaintiff Cisco Systems Inc.'s First
23 Supplemental Objections and Responses to Arista's First Set of Interrogatories (No. 15), served
24 July 24, 2015.

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1 Executed June 13, 2016, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the United States of America that the
3 foregoing is true and correct.

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EDUARDO E. SANTACANA